

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Juan Rene Sainz-Ortega,

Civil No. 09-543 (RHK/JJG)

Petitioner,

ORDER

v.

United States of America,

Respondent.

Before the Court is Respondent's Motion for Certificate of Appealability (Doc. No. 11) noted on his Notice of Appeal to the Eighth Circuit from the Judgment dismissing his application for habeas relief for lack of jurisdiction.

Having again reviewed the recommendation of Magistrate Judge Jeanne J. Graham's Report and Recommendation, Petitioner's Objections thereto, and all of the files, records and proceedings, the Court concludes that Petitioner has failed to make the required substantial showing of the denial of a constitutional right. This Court need not determine whether his appeal is pursued in good faith or whether it raises non-frivolous issues. What he must show is that the issues to be raised on appeal are debatable among reasonable jurists. In the Court's view, he has not, and cannot, make such a showing.

Accordingly, and upon all the files, records and proceedings herein, **IT IS ORDERED** that the Petitioner's Motion for Certificate of Appealability (Doc. No. 11) is **DENIED**.

Dated: June 1, 2009

s/Richard H. Kyle
RICHARD H. KYLE
United States District Judge